IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6564 of 1999
WITH
CIVIL APPLICATION NO 12302 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ORIENTAL INSURANCE COMPANY LIMITED

Versus

BHAVANABEN WD/O MOTISINH G VANSIYA

Appearance:
MR SHALIN N MEHTA for Petitioner
MR YN RAVANI for Respondent No. 1
MR DHARMESH V SHAH for Respondent No. 6
MR SUDHIR M MEHTA for Respondent No. 8, 9

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE M.C.PATEL

Date of decision: 16/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

On the request of learned counsel for the appellant, this appeal is taken up for final hearing today.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 at the instance of the Insurance Company, who has challenged the judgment and award of the Motor Accident Claims Tribunal (Auxiliary) at Bharuch, in respect of the award passed under Section 168 of the said Act.

3. We have carefully perused the impugned judgment and award and have also perused such oral and documentary evidence on record to which our attention has been drawn.

4. It is well settled law by now that an appeal under Section 173 of the Motor Vehicles Act at the instance of the insurer can only lie in respect of statutory defences available to the Insurance Company, and in such an appeal the appellant cannot be permitted to urge grounds of defences which would otherwise be available to an owner and driver.

5. The only exception to this principle would be where the insurer had been permitted by the Tribunal to take up such non-statutory defences by obtaining permission of the Tribunal under Section 170 of the said Act.

6. On the facts of the present case we find, which is also admitted by the learned counsel for the appellant that no application was made to the Tribunal at all under Section 170 of the said Act.

7. We, therefore, find on the facts of this case that the decision of the Supreme Court in the case of Shankarayya v/s. United India Insurance Co. Ltd. reported in AIR 1998 S.C. 2968, would completely cover the issue. In short, therefore the insurer would be restricted only to statutory defences.

8. On the particular facts of the case, no such submission or contention based on statutory defences could be raised by the learned counsel for the appellant.

9. We, therefore, find that there is no ground for interference with the impugned judgment and award by way of the present appeal. This appeal is therefore dismissed with no order as to costs.

CIVIL APPLICATION No. 12302 OF 1999 :

Since the main appeal is dismissed today, this application does not survive and is accordingly disposed of.

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* Pansala.